

COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION

DOCUMENT CONTROL

AT RICHMOND, OCTOBER 19, 2007

JOINT PETITION OF

2007 OCT 19 P 2: 24

A&N ELECTRIC COOPERATIVE

and

CASE NO. PUE-2007-00060

DELMARVA POWER & LIGHT COMPANY

For approval of purchase and  
sale of service territory and facilities

JOINT APPLICATION OF

A&N ELECTRIC COOPERATIVE

and

CASE NO. PUE-2007-00061

DELMARVA POWER & LIGHT COMPANY

For approval of certificates of  
public convenience and necessity

JOINT PETITION OF

OLD DOMINION ELECTRIC COOPERATIVE

and

CASE NO. PUE-2007-00062

DELMARVA POWER & LIGHT COMPANY

For approval of purchase and  
sale of transmission facilities

JOINT APPLICATION OF

OLD DOMINION ELECTRIC COOPERATIVE

and

CASE NO. PUE-2007-00063

DELMARVA POWER & LIGHT COMPANY

For approval of certificates of  
public convenience and necessity

APPLICATION OF

A&N ELECTRIC COOPERATIVE

CASE NO. PUE-2007-00065

For approval of special rates

## ORDER APPROVING APPLICATIONS

On July 3, 5, and 13, 2007, five applications ("Applications") were filed with the State Corporation Commission ("Commission") by A & N Electric Cooperative ("ANEC"), Old Dominion Electric Cooperative ("Old Dominion"), and/or Delmarva Power & Light Company ("Delmarva") (ANEC, Old Dominion, and Delmarva are jointly referred to herein as "Applicants").

As set forth in the Applications, ANEC is a utility consumer cooperative organized under the laws of the Commonwealth of Virginia. ANEC is certificated to provide retail electric service in the Eastern Shore counties of Accomack and Northampton, Virginia, where it serves approximately 11,182 customers. Delmarva is a public service company organized under the laws of the State of Delaware and the Commonwealth of Virginia. Delmarva is certificated to provide electric service in Accomack and Northampton Counties, Virginia, where it serves approximately 22,400 customers. Delmarva also serves approximately 493,000 customers in Delaware and Maryland. Old Dominion is a utility aggregation cooperative organized under the laws of the Commonwealth of Virginia. It provides generation, transmission, ancillary and other related services to twelve member electric distribution cooperatives serving retail customers in Virginia, Delaware, Maryland, and parts of West Virginia. ANEC is one of the distribution cooperatives served by Old Dominion.

Collectively, the Applications would effect Delmarva's withdrawal from the Virginia market as a certificated provider of retail electric service. The Applications also would result in ANEC expanding its Eastern Shore service territory within Accomack and Northampton Counties to include Delmarva's current certificated service territory for providing retail electric service. ANEC will acquire Delmarva's distribution system assets; it will not acquire any of Delmarva's generation or transmission facilities. The Applications propose that certain of

Delmarva's transmission facilities on the Eastern Shore will be purchased and subsequently operated by Old Dominion.

In Case Nos. PUE-2007-00060 and PUE-2007-00061 ("Distribution Dockets"), Delmarva and ANEC request that the Commission: (i) grant the parties thereto authority to transfer Delmarva's electric distribution facilities located in Delmarva's Virginia service territory to ANEC;<sup>1</sup> (ii) issue ANEC certificates of public convenience and necessity for the acquisition of Delmarva's electric distribution facilities; (iii) issue ANEC certificates of public convenience and necessity to furnish electric utility service in Delmarva's current Virginia service territory; (iv) cancel Delmarva's certificates of public convenience and necessity to furnish retail electric utility service in Virginia; and (v) provide such further relief as may be appropriate.

ANEC and Delmarva state that the proposed transaction, if approved, would result in "modest, immediate savings to residential customers in the Delmarva Virginia service territory, establish Virginia based ownership and operation of their electric utility service, ensure necessary investment in facility maintenance and upgrades, and unite Virginia's Eastern Shore in a common utility service community, and dedicate the benefit of any operating margins exclusively to local consumers."<sup>2</sup> ANEC and Delmarva further declare that the transfer of Delmarva's Virginia service territory and distribution system assets associated therewith will also result in long-term savings to Delmarva's Virginia customers. ANEC's near-term plan is to "lower residential rates charged to Delmarva's Virginia customers by 2.40 percent and to

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<sup>1</sup> The negotiated purchase price for Delmarva's distribution facilities used in conjunction with the operation of its Virginia service territory is \$39,575,000.

<sup>2</sup> Distribution Dockets application at 7.

maintain the base rates charged to Delmarva's non-residential customers to what they are at the time the transactions close."<sup>3</sup>

In addition, ANEC and Delmarva state that in the long term, "all of Delmarva's Virginia customers will benefit by avoiding direct exposure to market volatility that they would experience when the existing Delmarva proxy formula [under the previously approved Memorandum of Agreement ('MOA')] ends. As members of ANEC, these customers' exposure to wholesale market rates will be insulated through ANEC's wholesale power contract with Old Dominion, where power purchased in the wholesale market is only part of the supply portfolio."<sup>4</sup>

The Distribution Docket application also notes that "all of the Delmarva load in Virginia will be supplied by Old Dominion through the purchase of power in the wholesale market."<sup>5</sup> Old Dominion has generation assets sufficient to generate 45 percent of its members' power requirements. Consequently, the application states, Old Dominion must supply all new load through purchases in the wholesale market. The application further states that since wholesale power prices are higher than Old Dominion's embedded generation costs, "all new load puts upward pressure on the Old Dominion fuel factor."<sup>6</sup> Thus, ANEC's acquisition of Delmarva's Virginia load "is expected to increase Old Dominion's average cost and have a negative impact on all Old Dominion members, including ANEC's existing members."<sup>7</sup> To address that concern, ANEC proposes to "pay out of the revenue from the acquired territory an incremental power cost

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<sup>3</sup> *Id.* at 10.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 13.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 13-14.

contribution to Old Dominion, as an add-on to its wholesale power bill."<sup>8</sup> The proposed incremental contribution would be made in each of the four years following ANEC's acquisition of Delmarva's Virginia service territory.

The Distribution Dockets application also notes that the proposed transaction will triple ANEC's customer base. In addition, the miles of distribution lines would increase 1.86 times, and the book value of distribution plant would increase 2.18 times. As stated in the Distribution Dockets application, the net effect is that the proposed transaction would "*increase* the number of consumers per mile served by ANEC, and *decrease* the net investment in utility plant per consumer served. These basic factors along with other economies of scale contribute to economic feasibility of the Transaction."<sup>9</sup> Thus, the Applicants contend that "the financial aspects of the Transaction . . . will ultimately inure to the benefit of all the members of [ANEC], new and old."<sup>10</sup>

In Case Nos. PUE-2007-00062 and PUE-2007-00063 ("Transmission Dockets"), Delmarva and Old Dominion request that the Commission: (i) grant authority to transfer certain of Delmarva's electric transmission facilities located in Virginia to Old Dominion;<sup>11</sup> (ii) issue Old Dominion appropriate certificates of public convenience and necessity for the acquisition of these transmission facilities; (iii) issue Old Dominion appropriate certificates of public convenience and necessity to furnish service on the Eastern Shore of Virginia; (iv) issue a new certificate of public convenience and necessity to Delmarva for its retained transmission and associated facilities in Virginia; and (v) provide such further relief as may be appropriate.

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<sup>8</sup> *Id.* at 14.

<sup>9</sup> *Id.* at 25 (emphasis in original).

<sup>10</sup> *Id.* at 26.

<sup>11</sup> The proposed price for the purchase and sale of Delmarva's transmission facilities subject to this transaction is \$4.8 million.

The Transmission Dockets application states that certificating Old Dominion to acquire and to operate such facilities "is expected to continue and enhance reliable service to the public."<sup>12</sup> Moreover, the application notes that with the tripling of ANEC's load, "Old Dominion's interest and incentive to properly maintain and improve the transmission facilities which are essential to serving a member cooperative will be high."<sup>13</sup> Old Dominion and Delmarva also contend that the cost of maintaining transmission service is likely to be reduced since Old Dominion is a not-for-profit, tax-exempt electric cooperative owned by its member cooperatives; Old Dominion's primary interest is providing its members (which include ANEC) "reliable electric capacity and energy at the lowest reasonable price."<sup>14</sup>

In Case No. PUE-2007-00065 ("Special Rates Docket"), ANEC requests that the Commission approve its proposal for special rates applicable to Delmarva's current Virginia customers during a four-year transition period following ANEC's acquisition of Delmarva's Virginia service territory. Specifically, ANEC has requested the Commission's approval of special transitional rate schedules in order to "allow ANEC a reasonable opportunity to assimilate . . . new customers, distribution facilities and service territory. . . ."<sup>15</sup> According to this application, these transitional rate schedules are different from ANEC's rate schedules in its current service territory and would be applicable to its "new member consumers in the acquired Delmarva Virginia service territory."<sup>16</sup> ANEC asserts that "the Transition Rates from ANEC

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<sup>12</sup> Transmission Dockets application at 9. These transmission facilities are currently operated by PJM (Delmarva is a PJM member), and are included in Delmarva's transmission rate as approved by the Federal Energy Regulatory Commission ("FERC"). The application states that Old Dominion intends to file for FERC review and acceptance of a revenue requirement to collect the cost of these facilities, with a rate of return. *Id.* at 10.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Special Rates Docket application at 1.

<sup>16</sup> *Id.* at 2.

will ensure that no customer receives an increase in rates on their first bill from ANEC as compared to the Delmarva rates effective as of June 1, 2007, and that many of Delmarva's residential customers in Virginia will see a rate decrease."<sup>17</sup>

ANEC also states that the transition rate schedules proposed in the Special Rates Docket application will "protect the public interest by providing rate stability for the acquired Delmarva customers and sufficient revenue for ANEC during the [proposed] 48-month Transition Period."<sup>18</sup> Specifically, ANEC asserts that these transition rate schedules will enable it to "recover its costs, maintain reliable service, and avoid any unreasonable adverse rate impacts to either its current member/consumers or its new member/consumers, and also the other member distribution cooperatives of Old Dominion."<sup>19</sup> Finally, ANEC proposes to make a voluntary power cost contribution to Old Dominion "to help offset some of the potential effect on wholesale power supply prices for the other Old Dominion member cooperatives. . . ."<sup>20</sup>

On July 18, 2007, the Commission issued an Order for Notice and Comment that, among other things, (1) established a procedural schedule for these dockets, and (2) required the Applicants to provide public notice of the Applications. On or before August 10, 2007, notices of participation in this proceeding were filed by Northern Virginia Electric Cooperative ("NOVEC") and by the Office of the Attorney General's Division of Consumer Counsel ("Consumer Counsel"). Pursuant to the Order for Notice and Comment, the Commission also received written and electronic public comments on the Applications.

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<sup>17</sup> *Id.* at 6-7.

<sup>18</sup> *Id.* at 17.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 16. The voluntary cost contribution will be at least \$3,125,000. *Id.*

On August 29, 2007, Consumer Counsel filed Comments on the Applications, in which Consumer Counsel stated as follows:

Consumer Counsel generally supports the proposed transfer of Delmarva's Virginia service territory and facilities. Considering the five applications together with the uncertainty related to Delmarva's future rates, the proposal appears to reasonably balance numerous interests in a manner that can reasonably be expected to benefit affected consumers. ... Consumer Counsel recommends that ANEC be required to eliminate any rate differentiation between transition rates proposed for Delmarva's former customers (if approved) and ANEC's rates for existing customers by no later than the end of the four-year transition period. ... Subject to this and other appropriate conditions, Consumer Counsel believes that the proposed transfer satisfies the applicable statutory standards for approval.<sup>21</sup>

On August 29, 2007, NOVEC filed Comments and Request for Hearing, in which NOVEC stated as follows:

NOVEC requests that the Commission either direct a full evidentiary hearing or deny the transaction as proposed. Either way, the Commission should step in and protect the overwhelming number of Virginians that will see their rates increase as a result of a transaction on the Eastern Shore that the evidence suggests will not benefit them and over which they have no control.<sup>22</sup>

On September 7, 2007, ANEC and Old Dominion filed a Response in opposition to NOVEC's Request for Hearing.

On September 11, 2007, the Commission issued an Order Scheduling Hearing, which scheduled a hearing in this proceeding to commence on October 3, 2007.

On September 14, 2007, the Commission's Staff ("Staff") filed a Staff Report, in which Staff stated as follows:

[T]he above facts do not lend themselves to a rigorous determination relative to the public interest implications of the

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<sup>21</sup> Consumer Counsel's August 29, 2007 Comments at 3, 16.

<sup>22</sup> NOVEC's August 29, 2007 Comments and Request for Hearing at 5.

petition. Issues such as the continued relevance of the MOA; the uncertainty of long term market prices; the lack of a rigorous cost benefit analysis by the application(s) and a host of other issues place the Staff in the position of being unable to reach a conclusion relative to the merits of the joint petition. Rather, any determination is simply a judgment call based on a qualitative balancing of the foregoing considerations. Accordingly, the Staff's goal is to present the key considerations in an orderly manner to assist the Commission in exercising its judgment.<sup>23</sup>

On September 18, 2007, the Commission issued (1) an Order granting a motion by Old Dominion and Delmarva to amend the Transmission Dockets application, and (2) an Order granting a motion by ANEC to amend the Special Rates Docket application.

On September 19, 2007, the Commission issued an Order denying ANEC's and Old Dominion's Motion to Strike the Notice of Participation filed by NOVEC.

On September 21, 2007, Delmarva filed a Response to the Staff Report, to Consumer Counsel's Comments, and to NOVEC's Comments.

On September 21, 2007, ANEC and Old Dominion filed a Response to the Staff Report, to Consumer Counsel's Comments, and to NOVEC's Comments.

The hearing was held on October 3-4, 2007. Eric M. Page, Esquire, John A. Pirko, Esquire, James P. Guy, II, Esquire, and Samuel R. Brumberg, Esquire, appeared on behalf of ANEC and Old Dominion. Richard D. Gary, Esquire, appeared on behalf of Delmarva. Brian R. Greene, Esquire, appeared on behalf of NOVEC. D. Mathias Roussy, Jr., appeared on behalf of Consumer Counsel. William H. Chambliss, Esquire, and Arlen K. Bolstad, Esquire, appeared on behalf of Staff. Vernon N. Brinkley, D. Richard Beam, Gregory L. Booth, Jack D. Gaines, Daniel M. Walker, and James M. Reynolds testified for ANEC and Old Dominion. William M. Curtis and Robert Bisson testified for NOVEC. Robert Dalton, David Roberts, John Ballsrud, and Cody Walker testified for Staff.

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<sup>23</sup> Staff's September 14, 2007 Staff Report, Summary at 3.

NOW THE COMMISSION, upon consideration of this matter, approves the Applications subject to the requirements ordered herein.

Code of Virginia

In the Distribution Dockets, ANEC and Delmarva request approval under §§ 56-89 and 56-90 of the Utility Transfers Act<sup>24</sup> and under §§ 56-265.2 and 56-265.3 of the Utility Facilities Act.<sup>25</sup> In the Transmission Dockets, Old Dominion and Delmarva request approval under the same statutes. These statutes provide in part as follows:

§ 56-89. Acquisition or disposition of utility assets or utility securities.

It shall be unlawful for any public utility, directly or indirectly, to acquire or dispose of any utility assets situated within the Commonwealth or any utility securities of any other company unless such acquisition or disposition shall have been authorized by the Commission. ....

§ 56-90. Procedure for authority to acquire or dispose of utility assets or securities.

Application for authority to acquire or dispose of utility assets or utility securities under § 56-89 shall be by petition to the Commission. ... Upon the filing of the petition, if the Commission shall deem a hearing necessary, the Commission shall assign the matter for prompt hearing. If and when the Commission, with or without hearing, shall be satisfied that adequate service to the public at just and reasonable rates will not be impaired or jeopardized by granting the prayer of the petition, the Commission shall make such order in the premises as it may deem proper and the circumstances require, and thereupon it shall be lawful to do the things provided for in such order....

§ 56-265.2. Certificate of convenience and necessity required for acquisition, etc., of new facilities.

A. It shall be unlawful for any public utility to construct, enlarge or acquire, by lease or otherwise, any facilities for use in public utility

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<sup>24</sup> See Va. Code §§ 56-88 *et seq.* ("Transfers Act").

<sup>25</sup> See Va. Code §§ 56-265.1 *et seq.* ("Facilities Act").

service, except ordinary extensions or improvements in the usual course of business, without first having obtained a certificate from the Commission that the public convenience and necessity require the exercise of such right or privilege. Any certificate required by this section shall be issued by the Commission only after opportunity for a hearing and after due notice to interested parties.

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§ 56-265.3. Certificate to furnish public utility service; allotment of territory transfers, leases or amendments.

A. No public utility shall begin to furnish public utility service within the Commonwealth without first having obtained from the Commission a certificate of public convenience and necessity authorizing it to furnish such service. ....

B. On initial application by any company, the Commission, after formal or informal hearing upon such notice to the public as the Commission may prescribe, may, by issuance of a certificate of public convenience and necessity, allot territory for development of public utility service by the applicant if the Commission finds such action in the public interest.

In the Special Rates Docket, ANEC requests approval under Va. Code § 56-235.2, which provides in part as follows:

§ 56-235.2. All rates, tolls, etc., to be just and reasonable to jurisdictional customers; findings and conclusions to be set forth; alternative forms of regulation for electric companies.

A. ... Notwithstanding § 56-234, the Commission may approve, either in the context of or apart from a rate proceeding after notice to all affected parties and hearing, special rates, contracts or incentives to individual customers or classes of customers where it finds such measures are in the public interest. Such special charges shall not be limited by the provisions of § 56-235.4. ....

B. The Commission shall, before approving special rates, contracts, incentives or other alternative regulatory plans under subsection A, ensure that such action (i) protects the public interest, (ii) will not unreasonably prejudice or disadvantage any customer or class of customers, and (iii) will not jeopardize the continuation of reliable electric service.

Distribution Dockets – Case Nos. PUE-2007-00060 and PUE-2007-00061

After considering the factual record before us, the Commission finds that, subject to the requirements ordered below, the Distribution Dockets application meets the relevant statutory standards, specifically, that: (1) adequate service to the public at just and reasonable rates will not be impaired or jeopardized by granting the transfers requested in the Distribution Dockets; and (2) the public convenience and necessity requires issuance of certificates to ANEC and cancellation of Delmarva's certificates as requested in the Distribution Dockets, and that such action is in the public interest.

The proposed transaction will benefit Delmarva's Virginia customers. One of the primary reasons that this case is in front of us is because Delmarva voluntarily chose to divest its generating units under the Virginia Electric Utility Restructuring Act, Va. Code §§ 56-576 *et seq.* As a result of such divestiture, Delmarva must purchase power for its customers from the volatile wholesale markets, with the result that customers in Delmarva's service territory are exposed to requests from Delmarva for precipitous rate increases such as those sought in 2006 and earlier this year. The Commission found that the MOA, which was ordered as part of Delmarva's voluntary divestiture, provided certain protections to Delmarva's ratepayers in 2006 and 2007. We cannot predict, however, the extent to which (if any) the MOA may apply in any future Commission proceeding or in any state or federal court if challenged by Delmarva.

Indeed, Delmarva currently is challenging the most recent Commission rate decision in federal court and at the Supreme Court of Virginia.<sup>26</sup> Accordingly, Consumer Counsel concludes that "there exists significant uncertainty concerning Delmarva's future rates... and the proposed transfer is likely to benefit Delmarva's Virginia customers by eliminating this

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<sup>26</sup> Consumer Counsel's August 29, 2007 Comments at 5 n.7.

uncertainty and providing for less volatility in future rates, particularly over the long term."<sup>27</sup>

For example, under at least one plausible scenario, Delmarva's Virginia customers could be dependent upon the wholesale electric market for their entire cost of electricity. As explained by Consumer Counsel: "In comparison, ANEC is a member of [Old Dominion], a power supply cooperative that has ownership interests in both baseload and non-baseload generation facilities. These generation interests would provide a significant benefit to Delmarva's customers if and when Delmarva's customers would otherwise be entirely exposed to volatile market prices."<sup>28</sup> In short, these transactions substantially moderate the exposure of Delmarva's customers to precipitous future rate increases.

ANEC's application in the Distribution Dockets, along with the testimony of its President and CEO, Vernon Brinkley,<sup>29</sup> describe the geographical and operational synergies that will benefit both ANEC and the former Delmarva customers after consolidation. The Staff Report shows the fragmented nature of the ANEC and Delmarva service territories, which would be consolidated after this transaction.<sup>30</sup> The acquisition of the Delmarva service territory will allow ANEC "to serve clusters of customers living in towns, as well as developments along the shoreline, providing a customer base with a lower plant investment per consumer" and will provide capital and O&M (operation and maintenance) benefits.<sup>31</sup> The transaction will triple ANEC's customer base, increase its miles of distribution line by 1.86, and increase the book value of that plant by 2.18 – thus *increasing* the number of customers served per mile and

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<sup>27</sup> *Id.* at 5.

<sup>28</sup> *Id.* at 6 (footnote omitted).

<sup>29</sup> *See, e.g.,* Brinkley, Tr. 39-59.

<sup>30</sup> *See* Staff's September 14, 2007 Staff Report at Exhibit 1.

<sup>31</sup> Distribution Dockets application at 8-11.

*decreasing* the net investment in utility plant per customer served.<sup>32</sup> In addition, Mr. Brinkley testified that based on ANEC's financial forecast, the proposed consolidation would push ANEC's next base rate increase from 2010 as currently projected to beyond the year 2016.<sup>33</sup>

We next address the wholesale power cost impact on ANEC and other member cooperatives of Old Dominion.<sup>34</sup> All of Old Dominion's member cooperatives are currently obligated by contract to purchase their full power requirements from Old Dominion. Old Dominion owns generation sufficient to supply approximately 45 percent of its members' needs and must purchase the remainder from the wholesale power market. Old Dominion is entitled to pass-through its wholesale power purchase costs to its members, and the members may (but are not required to) pass such costs on to their member-customers. The new load represented by Delmarva's former customers will require Old Dominion to purchase additional wholesale power supplies, the cost of which is expected to be higher than the cost of Old Dominion's self-generated supply at this time. As a result, total power supply costs are expected to increase, and, under Old Dominion's contracts with its members, all members share in the incremental costs incurred to meet the needs of all members.

NOVEC's concerns in this case center around this expected increase in wholesale power costs. NOVEC "is not asking that the Commission deny this transaction," but "objects to, however, the Applicants' attempts to require NOVEC and other member cooperatives to subsidize the increase in power supply costs that will result from this transaction."<sup>35</sup> NOVEC's counsel further stated that "... I think NOVEC's interest is money – I don't think that's a

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<sup>32</sup> *Id.* at 25-26.

<sup>33</sup> Brinkley, Tr. 58.

<sup>34</sup> For purposes of this analysis, we assume – without deciding – that all of Old Dominion's distribution cooperatives in Virginia and the members thereof are encompassed within the term "public" as used in Va. Code § 56-90.

<sup>35</sup> Tr. 31.

secret."<sup>36</sup> In response to questions from the bench during the hearing, NOVEC's Vice President of Electric System Development, Robert Bisson, set forth NOVEC's position as follows:

COMMISSIONER CHRISTIE: You said and Mr. Greene said in his opening statement that NOVEC is not opposed to this transaction, but you want to be held entirely harmless for the incremental power costs that are going to come about because [ANEC] is, obviously, taking on additional load.

THE WITNESS: That's correct.

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COMMISSIONER CHRISTIE: So NOVEC's position, then, is that this Commission should order [ANEC] to make a voluntary contribution equal to the total incremental cost of power, additional power.

THE WITNESS: I'm not saying you should order it, I'm saying that that is a mechanism --

COMMISSIONER CHRISTIE: Should we just suggest it?

THE WITNESS: Well, it's a mechanism that will make us and the other members whole. I don't know if there are other similar mechanisms that can do the same thing. That's my only point in saying I'm not sure. Something along those lines that would make this a cost-neutral on the wholesale power side to NOVEC, NOVEC could then support the transaction.

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COMMISSIONER CHRISTIE: ... Is there nothing between zero and a hundred that you regard as acceptable? You don't regard what [ANEC] has offered as acceptable. I'm just trying to find out if NOVEC's position is that nothing less than a hundred percent total hold-harmless is acceptable to you.

THE WITNESS: I would have to say yes right now.

COMMISSIONER CHRISTIE: Yes, nothing but a hundred percent hold harmless is acceptable?

THE WITNESS: Yes.

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<sup>36</sup> Tr. 330.

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CHAIRMAN MORRISON: ... And would that hold true indefinitely or until the NOVEC contract itself expired – 2028, I think. Is that right?

THE WITNESS: That's when the contract expires, yes.

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COMMISSIONER CHRISTIE: So 100 percent hold-harmless through 2028, on a floating basis, because fuel costs, obviously, are going to float. You can't predict what are going to be the fuel costs. So NOVEC's position is 100 percent hold-harmless, on a floating basis, no matter how high it goes, through 2028.

THE WITNESS: Right now, yes.<sup>37</sup>

Old Dominion has twelve member cooperatives. Although NOVEC states that it seeks to protect itself and the other member cooperatives other than ANEC, NOVEC is the only member cooperative that has contested any part of these transactions in this proceeding. Not only did none of the other member cooperatives protest the Applications before the Commission, at least a majority apparently approved Old Dominion's acquisition of Delmarva's transmission facilities for the purpose of supporting this transaction. In addition, the President of Community Electric Cooperative, Mr. Reynolds, provided testimony in support of the Applications and on the benefits he expects to accrue to his cooperative from the proposed transaction.<sup>38</sup>

To the extent NOVEC asks us to require ANEC or Delmarva to absorb 100% of any increased wholesale power costs resulting from this transaction, we deny such request as not in the public interest and as unnecessary in order to meet the statutory standards mandated herein.

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<sup>37</sup> Tr. 296-300. Subsequent to this exchange, NOVEC's counsel asked "the Commission to do two things:" (1) "delay a ruling for at least four weeks;" and (2) "direct the parties to negotiate in good faith to see if a compromise can be reached that is in the interest of everyone." Tr. 323. Counsel for ANEC and Old Dominion, after conferring with his client, opposed NOVEC's request. Tr. 332. The Commission noted that the parties can negotiate if they choose to do so, decided to go forward with the proceedings on the pending Applications as the Applicants had a right to ask for, and denied NOVEC's request. Tr. 332-333.

<sup>38</sup> See Reynolds, Tr. 465-503.

Likewise, the statute does not require ANEC to make a larger voluntary wholesale power cost contribution to Old Dominion than it already proposes in this proceeding.<sup>39</sup>

NOVEC has not established that any increased wholesale power costs resulting from these transactions will impair or jeopardize adequate service at just and reasonable rates to any electric distribution cooperative in Virginia or the members thereof. NOVEC has not established that any increased wholesale power costs resulting from ANEC's acquisition of Delmarva's Virginia load will be greater than increased wholesale power costs resulting from so-called "organic" load growth by any of Old Dominion's member distribution cooperatives – including NOVEC. Indeed, ANEC explains as follows:

For several years, NOVEC has been blessed with rapid development and population growth, producing rapid increases in its demand for electricity. From 2004 to 2005, NOVEC's demand went from 652 MW to 762 MW, a full 110 MW increase (a one year load level increase similar to the Distribution Transaction).<sup>40</sup>

Moreover, there is evidence in this case that NOVEC's load has increased by approximately one million megawatt hours from 1999-2006, which is about 37 times the growth experienced by ANEC over the same period of time.<sup>41</sup> Like ANEC, power to serve NOVEC's additional load must be supplied by Old Dominion, with any additional costs borne by all member cooperatives.

There is no evidence, and NOVEC did not assert, that the increased wholesale power requirements created by its own load growth has impaired or jeopardized adequate service at just and reasonable rates to the other distribution cooperatives or that such load growth was not in the

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<sup>39</sup> As noted above, ANEC proposes to make a voluntary wholesale power cost contribution to Old Dominion of at least \$3.125 million spread out over four years. *See* Brinkley, Tr. 139-140; Special Rates Docket application at 16.

<sup>40</sup> ANEC's and Old Dominion's September 21, 2007 Response at 28 (footnote omitted). For example, NOVEC has taken steps, some successful and some not, to support increases in its load by adding large users such as AOL and the Smithsonian Institution. *See* Curtis, Tr. 250-251, 268-272; Bisson, Tr. 347-348; Beam, Tr. 427-431. *See also* ANEC's and Old Dominion's September 21, 2007 Response at 8 n.4.

<sup>41</sup> Exh. 9.

public interest. Rather, NOVEC distinguishes between "internal organic load growth versus the voluntary acquisition of another service territory."<sup>42</sup> The Transfers Act recognizes such distinction to the extent that a voluntary acquisition of another service territory requires our approval, whereas similar approval is not required for so-called "organic" load growth. Such distinction, however, does not necessitate a denial of the Applications or adoption of the specific requirements requested by NOVEC. Rather, the distinction means that we must apply the appropriate statutory standards to the Applications before us; it does not mean that load growth by voluntary acquisition is somehow disfavored under Virginia law beyond the statutory requirements that we must follow.

We do not suggest, however, that the proposed transactions are cost-free to Delmarva, ANEC, Old Dominion, NOVEC, or any other electric distribution cooperative. The statutory requirement, however, does not require the proposed transaction to be "cost-free" or, put another way, "rate increase-free." Rather, we find that, under the statute that we must follow, none of NOVEC's requests are necessary in order for the Commission to "be satisfied that adequate service to [Old Dominion's distribution cooperatives in Virginia and the members thereof] at just and reasonable rates will not be impaired or jeopardized by granting" the requested transfers; thus, we do not "deem proper" and do not find that "the circumstances require" the adoption of NOVEC's requests.<sup>43</sup> We also conclude that the concerns raised by NOVEC do not warrant a finding that the issuance and cancellation of certificates, as requested by the Applicants, is not in the public interest.<sup>44</sup>

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<sup>42</sup> Tr. 89.

<sup>43</sup> Va. Code § 56-90.

<sup>44</sup> Consumer Counsel further discusses this as follows (Tr. 33-36):

[T]he proposed transfer of Delmarva's service territory and most of Delmarva's Virginia assets, considered as a whole, is a reasonable attempt to balance a

Transmission Dockets – Case Nos. PUE-2007-00062 and PUE-2007-00063

The Transmission Dockets application, along with the testimony of Old Dominion's Vice President of Power Supply and Transmission Planning, D. Richard Beam, describe the purpose and benefits of transferring the majority of Delmarva's transmission facilities in Virginia to Old Dominion. Old Dominion explains, among other things, that: it currently serves as transmission provider for ANEC and its other member cooperatives; if ANEC becomes the sole provider of distribution service on the Eastern shore, Old Dominion's purchase of Delmarva's transmission facilities will ensure continued transmission reliability; the overall transmission revenue requirement will be lower for Old Dominion than for Delmarva; it projects certain capital cost savings; and its proposed transaction is necessarily conditioned on ANEC acquiring Delmarva's Virginia service territory.<sup>45</sup>

After considering the factual record before us, the Commission finds that the Transmission Dockets application meets the relevant statutory standards, specifically, that: (1) adequate service to the public at just and reasonable rates will not be impaired or jeopardized by granting the transfers requested in the Transmission Dockets; and (2) the public convenience and necessity requires issuance of certificates to Old Dominion and to Delmarva and cancellation of certificates previously issued to Delmarva as requested in the Transmission Dockets, and that such action is in the public interest.

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number of interests [and] would not jeopardize the provision of adequate electric service at just and reasonable rates, notwithstanding an acknowledged expectation that the transaction will have some short-term rate impact. ... To the extent that [Old Dominion's] contractual relationship with its members dictates that all members share equally any incremental wholesale power costs incurred to serve additional load, then that is the bargain that was struck by those parties, and that is the bargain that was approved by the FERC. ... [Approval of the Applications] is the prudent course and is in the public interest, subject to reasonable conditions [discussed later herein].

<sup>45</sup> See Transmission Dockets application at 8-15; Beam, Tr. 153-159.

### Special Rates Docket – Case No. PUE-2007-00065

After considering the factual record before us, the Commission finds that, subject to the requirements ordered below, the Special Rates Docket application meets the relevant statutory standards, specifically, that the proposed transition rates: (1) protect and are in the public interest; (2) will not unreasonably prejudice or disadvantage any customer or class of customers; and (3) will not jeopardize the continuation of reliable electric service. We agree with ANEC that the proposed transition rates "are necessary to the successful completion of the [t]ransaction, in order to provide the ratepayers continuity, to allow ANEC to retain its financial stability and to support the overall economic feasibility of the [t]ransaction [and] will protect the public interest by providing rate stability for the acquired Delmarva customers and sufficient revenues for ANEC during the 48-month [t]ransition [p]eriod."<sup>46</sup> Accordingly, as a result of the transactions and the rates approved in this proceeding, the current rates paid by Delmarva's existing customers and that company's Virginia tariffs – including fuel rates and the MOA that is used to determine such rates – are superseded and no longer applicable.

### Additional Requirements

Finally, our approval in the Distribution Dockets and in the Special Rates Docket is subject to the following requirements, which we find in the public interest and deem proper and the circumstances require: (1) ANEC shall make the voluntary wholesale power cost contribution to Old Dominion of, at a minimum, \$3,125,000 spread out over four years; and (2) on or before January 1, 2012, ANEC shall file a base rate case, with a full cost of service study encompassing ANEC's entire post-acquisition footprint, to implement a cost-based rate for its combined system.<sup>47</sup>

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<sup>46</sup> Special Rates Docket Application at 16-17.

<sup>47</sup> See Consumer Counsel's August 29, 2007 Comments at 11-13.

Accordingly, IT IS HEREBY ORDERED THAT:

(1) Pursuant to §§ 56-89 and 56-90 of the Code of Virginia, the Joint Petition in Case No. PUE-2007-00060 is granted subject to the requirements established in this Order Approving Applications.

(2) Pursuant to §§ 56-265.2 and 56-265.3 of the Code of Virginia, the Joint Application in Case No. PUE-2007-00061 is granted subject to the requirements established in this Order Approving Applications.

(3) Pursuant to §§ 56-89 and 56-90 of the Code of Virginia, the Joint Petition in Case No. PUE-2007-00062 is granted.

(4) Pursuant to §§ 56-265.2 and 56-265.3 of the Code of Virginia, the Joint Application in Case No. PUE-2007-00063 is granted.

(5) Pursuant to § 56-235.2 of the Code of Virginia, the Application in Case No. PUE-2007-00065 is granted subject to the requirements established in this Order Approving Applications.

(6) ANEC shall make the voluntary wholesale power cost contribution to Old Dominion of, at a minimum, \$3,125,000 spread out over four years.

(7) On or before January 1, 2012, ANEC shall file a base rate case, with a full cost of service study encompassing ANEC's entire post-acquisition footprint, to implement a cost-based rate for its combined system.

(8) Certificates of public convenience and necessity are cancelled and issued as follows:

(a) The certificates of public convenience and necessity previously issued to Delmarva, as listed in attached Appendix A, are cancelled.

(b) The certificates of public convenience and necessity, listed in the attached Appendix B, relating to ANEC's acquisition of Delmarva's utility facilities in Virginia and the

provision of service in Delmarva's former territory, are issued to ANEC. Appropriate certificates and maps shall be issued by the Commission's Division of Energy Regulation and sent to ANEC.

(c) Certificate of public convenience and necessity number ET-9F which authorizes Delmarva to operate transmission lines and facilities in Accomack County shall be issued upon the filing by Delmarva of a Virginia Department of Transportation county map showing the location of the transmission facilities retained by Delmarva.

(d) Certificate of public convenience and necessity number ET-177 which authorizes Old Dominion to operate transmission lines and facilities in Accomack County and certificate of public convenience and necessity number ET-178 which authorizes Old Dominion to operate transmission lines and facilities in Northampton County shall be issued upon the filing by Old Dominion of Virginia Department of Transportation county maps showing the location of the transmission facilities acquired by Old Dominion.

(9) Within seven (7) days of consummation of the transaction approved in Case No. PUE-2007-00060, ANEC shall file with the Clerk of the Commission a report of action providing the date the transfer took place.

(10) Within seven (7) days of consummation of the transaction approved in Case No. PUE-2007-00062, Old Dominion shall file with the Clerk of the Commission a report of action providing the date the transfer took place.

(11) Within thirty (30) days of completing the proposed transfers, subject to administrative extension by the Director of Public Utility Accounting, ANEC and Old Dominion shall file reports with the Commission providing the actual sales price and the accounting entries reflecting the respective transfers on the party's books.

(12) ANEC and Old Dominion shall submit reports to the Director of Public Utility Accounting showing the contributions made by ANEC to Old Dominion as ordered herein within

thirty (30) days of making such contributions, subject to administrative extension by the Director of Public Utility Accounting. Such reports shall include an explanation and calculation of the contributions, and such reports shall be submitted until all contributions required herein are made.

(13) Beginning on or before March 1, 2009, ANEC shall submit to the Director of Public Utility Accounting annual "state of systems integration" reports, subject to administrative extension by the Director of Public Utility Accounting, which provide information showing the systems integration work that has been completed and that remains to be effectuated. These reports shall continue to be submitted until otherwise requested by the Director of Public Utility Accounting.

(14) Within thirty (30) days of the date of this Order Approving Applications, ANEC shall file with the Commission's Division of Energy Regulation revised tariffs reflecting the rates approved herein, to become effective upon consummation of the transaction approved herein.

(15) Except for the approval in Case No. PUE-2007-00065, this Order Approving Applications shall have no ratemaking implications.

(16) These cases are continued.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to:

Eric M. Page, Esquire, LeClair Ryan, P.C., Riverfront Plaza, East Tower, 951 East Byrd Street, 8th Floor, Richmond, Virginia 23219; John A. Pirko, Esquire, LeClair Ryan, P.C., 4201 Dominion Boulevard, Suite 200, Glen Allen, Virginia 23060; Richard D. Gary, Esquire, Hunton & Williams LLP, Riverfront Plaza, East Tower, 951 East Byrd Street, Richmond, Virginia 23219-4074; Brian R. Greene, Esquire, SeltzerGreene, PLC, Bank of America Center, 1111 East Main Street, Suite 1720, Richmond, Virginia 23219; C. Meade Browder, Jr., Senior Assistant Attorney General, Office of the Attorney General, Division of Consumer Counsel, 900 East

Main Street, Second Floor, Richmond, Virginia 23219; and D.M. Roussy, Jr., Assistant Attorney General, Office of the Attorney General, Insurance and Utilities Regulatory Section, 900 East Main Street, Second Floor, Richmond, Virginia 23219.

A True Copy  
Teste:

  
Clerk of the  
State Corporation Commission

## APPENDIX A

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## APPENDIX B

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